

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On May 2, 2016 appellant, then a 44-year-old cook, filed an occupational disease claim (Form CA-2) alleging that he sustained joint deterioration in both hands due to repetitive use of his hands at work. He first became aware of his condition and its relationship to his employment on April 19, 2016.

By decision dated June 17, 2016, OWCP denied appellant's occupational disease claim because the evidence of record was insufficient to establish a medical condition causally related to the accepted factors of his federal employment.

In a November 30, 2016 appeal request form, received by OWCP on December 5, 2016, appellant requested reconsideration of the June 17, 2016 decision. By decision dated January 17, 2017, OWCP denied further merit review of appellant's claim. It found that his request for reconsideration neither raised substantive legal questions, nor included new and relevant evidence.

In an undated letter, received by OWCP on February 23, 2017, appellant requested a review of the written record by an OWCP hearing representative.

By decision dated March 16, 2017, OWCP's hearing representative denied appellant's request for a review of the written record as he was not entitled to a review as a matter of right because he had previously requested reconsideration. It exercised its discretion and further denied appellant's request as the issue in the case could equally well be addressed through the reconsideration process.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>2</sup> Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>3</sup> OWCP regulations provide that the request must be sent within 30 days (as determined by the postmark or other carrier's date marking) of the date of the decision for which a review of the written record is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>4</sup>

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,<sup>5</sup> has the power to hold hearings and reviews of the written record in certain

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615

<sup>4</sup> *Id.* at § 10.616(a).

<sup>5</sup> *Supra* note 1.

circumstances where no legal provision was made for such reviews and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing or review of the written record.<sup>6</sup> OWCP procedures, which require OWCP to exercise its discretion to grant or deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.<sup>7</sup>

### **ANALYSIS**

Appellant's undated request for a review of the written record by an OWCP hearing representative was denied as he had previously requested reconsideration pursuant to 5 U.S.C. § 8128(a). In its March 16, 2017 decision, OWCP noted that, while appellant was not entitled to a review of the written record as a matter of right, it had considered the matter in relation to the issue involved and, under its discretionary authority, further denied the request as he could pursue his claim further by requesting reconsideration and submitting evidence in support of his claim.

Appellant had previously requested reconsideration on December 5, 2016, which OWCP denied in a January 17, 2017 nonmerit decision. In the instant case, appellant's request for a review of the written record, received February 23, 2017, was made following a request for reconsideration under 5 U.S.C. § 8128. Hence, OWCP correctly found that appellant was not entitled to review of the written record by a hearing representative as a matter of right under section 8124(b)(1) of FECA as he had previously requested reconsideration.<sup>8</sup>

OWCP then exercised its discretion and determined that appellant's request for a review of the written record could equally well be addressed through the reconsideration process. The Board finds that there is no evidence of record that OWCP abused its discretion in denying appellant's request.<sup>9</sup> Thus, the Board finds that OWCP's March 16, 2017 decision denying appellant's request for a review of the written record was proper under the law and facts of this case.

On appeal appellant argued the merits of his claim and asserted that documents supporting that he sustained a work-related injury under the instant case assigned OWCP File No. xxxxxx484 were incorrectly sent to his case assigned OWCP File No. xxxxxx169. As previously noted, the Board does not have jurisdiction over the merits of this case.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for a review of the written record pursuant to 5 U.S.C. § 8124.

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<sup>6</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>7</sup> *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(1) (October 2011).

<sup>8</sup> *Supra* note 2; see also *T.M.*, Docket No. 15-1477 (issued October 22, 2015).

<sup>9</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board